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SUBJECT: ADDING INSULT TO INJURY: THE OCTOBER 2000 RIOTS AND THE FAILURE OF THE DEPARTMENT OF POLICE INVESTIGATIONS.

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SUMMARY

1. The mid-September decision by the Department of Police Investigation in the Ministry of Justice to pursue no indictments in the police killings of 12 Israeli Arabs and one Palestinian during the October 2000 riots has given rise to embarrassment in official circles, and little public expression of support. The angry response of Israeli-Arab leaders is not, however, echoed by the majority of the Israeli Jewish public. Failure to apportion responsibility for the Arab fatalities may reaffirm the October 2000 riots as an emblem of Israeli-Arab inequality rather than as the positive turning point it might have provided for Jewish-Arab relations in Israel.
End Summary

POST MORTEM: THE AUTOPSY AND BALLISTICS ARGUMENT

2. The Department of Police Investigations report claimed that lack of evidence prevented it from identifying as culpable in the October 2000 killings any one of several police snipers videotaped by news organizations on the scene of the riots. Department Director Herzl Shviro told a September 18 news conference that refusal by victims' families to allow exhumations and autopsies deprived the Department of essential ballistics evidence that might have linked individual snipers to specific fatalities. The day after the publication of the Department's final report, the Hebrew-language Ha'aretz newspaper revealed that autopsies had been performed on at least four victims of sniper fire - without, officials said, yielding decisive information as to the identity of the responsible sniper. Regarding other fatalities, a former Israel Police commander told Israel Radio that in his opinion, the Department had yielded somewhat too readily to the refusal of some families to allow autopsies. Police and academic experts specializing in the history of investigations into police conduct in Israel asserted to the media that the Department is inclined to indict only when conviction by a court is a near-certainty. They added that the lack of readily available evidence for such convictions should not have closed the door to investigation.

THE ORR COMMISSION SOWED THE SEEDS OF FAILURE

3. One of the arguments leveled by the Department of Police Investigations at its critics was that it was instructed by the Attorney General not to embark on an investigation until the completion of the Orr Commission inquiry. This directive, the Department says, prevented it from functioning for almost three years and resulted in the loss of evidence that might otherwise have been collected from the scene of the riots and from eyewitnesses who were later reluctant to testify. In a lecture marking the second anniversary of the Orr Commission findings, however, former Commission member and expert on the Israeli Arab community Shimon Shamir told a Tel Aviv University audience that the Department could have gathered preliminary evidence during the several weeks that elapsed between the riots and the start of the Orr Commission's inquiry. Once the Orr Commission concluded its report, the recommendation for action was weak:

"Recommendations to initiate an investigation:
The committee recommended that the Ministry of Justice Department for the Investigation of Police investigate a number of incidents so that the proper authorities can decide whether to initiate criminal proceedings against anyone allegedly involved."

4. Shamir also noted that the generally poor level of the Department's investigations had been the subject of criticism in the August 2005 State Comptroller's report on the Department. The author of that report, retired Judge

Micha Lindstrauss, revealed that only a small percentage of the many cases submitted to the Department are actually investigated. Of those investigated, he found that only four percent had resulted in indictments.

A DEMOCRATIC STATE OF ALL ITS CITIZENS

15. Prominent Israeli Arabs say they were for the most part not surprised by the decision, having had few expectations and therefore little disappointment. Faisal Sawalha of the Regional Council for Unrecognized Villages in the Negev told POL "The Arabs citizens should find a mechanism to tell the world this is not a democratic state. It is democratic for Jews, not Arabs." In addition to plans for domestic protest such as strikes and rallies, local Arab leaders are talking about taking their protest to international forums and foreign states. Dr. Hanna Swaid, director of the Arab Center for Alternative Planning and a former mayor of the Arab-Israeli town of Eilaboun, sketched a familiar scenario: "Justice is better done internally, but if not, then Arabs will look internationally." Together with Dr. Phabet Abu Ras, a Negev region mediator, Swaid told POL that the drive for legal recourse by Israeli Arabs would draw inspiration from the recent arrest warrants issued against IDF generals in London. Dr. Abu Ras also said Israeli-Arab leaders plan to meet with an upcoming delegation of Jewish Americans to protest the Department's decision.

FOLLOW THE CHAIN OF COMMAND

16. The Department's decision not to indict anyone in the October 2000 killings elicited scant official government response. The Minister of Internal Security, Gideon Ezra, predictably upheld the conduct of the Israel Police and the decision of the Department. In a strenuous defense of the forces responsible for domestic security, Ezra praised the ways in which the Orr Commission recommendations have been implemented in regard to the handling of riot situations, use of live ammunition and rubber bullets, and the deployment of snipers. Ezra argued that the conditions that combined to produce the bloodshed of October 2000 cannot recur because the rules of engagement have been changed. While insisting that the Department of Police Investigations had been professional in its approach, however, Ezra stopped short of discussing their decision not to indict.

17. Subsequent media condemnation of the decision sparked angry reaction from the previously silent Justice Ministry. In a hastily called September 21 news conference, Israel's Attorney General, Meni Mazuz, said he was enraged by allegations that the decision not to file indictments demonstrated racism within the law enforcement system. Mazuz said no one wanted to live in a country in which indictments are filed in the absence of evidence merely to gratify an individual or a public sector. Anyone, Mazuz said, who believes the Department's decisions were wrong can submit an appeal or petition the Supreme Court. In the interim the Israeli Arab human rights monitoring group Adalah has written to the State Comptroller to protest the Department's report.

18. Initiating the legislature's inevitable discussion of the decision was the Knesset Interior Committee, which has held a first session to consider the Department's report and its decision not to indict. It remains to be seen whether the Committee will ask the kind of questions cited by Professor Shamir as answerable without benefit of autopsies or ballistics data: Why were police snipers deployed at the scene of demonstrations by Israeli citizens? Why were they equipped with lethal rubber-coated bullets and live ammunition? Who gave the order to deploy them? Who gave the order to open fire?

19. While the Orr Commission report was specific in naming names, it did not produce any disciplinary proceeding to implement its recommendations in regard to police personnel. This was particularly glaring in the case of northern District Police Commander Alik Ron, whom the Orr Commission recommended for early retirement from the Israel Police. Ron's retirement did transpire, but because it did not take place as the result of a disciplinary proceeding, it was not perceived by the Israeli-Arab community as redress of a wrong.

THE MEDIA TAKES THE LEAD

10. Amid the anger of Israeli Arabs, the Israeli media prefigured what observers say may develop into a long-overdue public debate on the disciplinary and judicial

options available to law enforcement and those investigating its functioning. The op-ed pages of the daily papers largely reflected the lack of credence the pundits gave to the Police Investigations Department. Mainstream media support for the Department's decision was tardy and took the form of isolated op-eds from far-right columnists. Yisrael Harel, in Ha'aretz of September 22, justified the lethal fire of the Israel Police as "the only way left to policemen to save themselves and perhaps not only themselves... until reinforcements arrived." A day earlier, September 21, The Jerusalem Post's Yossef Goell argued that "... it is obvious to me why the police resorted to live fire. Just imagine the consequences had the police failed to put down riots by a radicalized Arab population." For the most part, the media was not captive to hypothetical doomsday scenarios. Rather than give the last word to such speculative analysis it focused instead on what was known for certain -- that as Israeli-Arab Knesset member Mohammed Barakeh said "people had been killed and justice had yet to be seen to be done."

END